BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2018-2-E

IN RE: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company	))))))	**PETITION FOR REHEARING AND/OR RECONSIDERATION**

INTRODUCTION

The South Carolina Solar Business Alliance, Inc., ("SCSBA"), Intervenor in the above-referenced Docket, hereby petitions the Public Service Commission of South Carolina ("Commission") for Rehearing or Reconsideration of Order No. 2018-322, dated April 30, 2018, and Order No. 2018-322(A), dated May 2, 2018, pertaining to South Carolina Electric & Gas, Company ("SCE&G), in the above-referenced Docket. Specifically, SCSBA petitions the Commission pursuant to S.C. Code Ann. Section 58-27-2150 (1976, as amended) and S.C. Code Ann. Reg. 103-854 to reconsider its Findings and decision therein. For the reasons hereinafter set forth, SCSBA would respectfully submit that this Commission overlooked and misapprehended the evidence of record.

PETITION FOR RECONSIDERATION/REHEARING

1. The Commission Required the Intervenors to Provide Alternative Rates but Prevented Them From Doing So.

The parties presented ample evidence at the hearing that the Company's proposed rates were unreasonable. And although they did not reach the same conclusion on every issue, the witnesses for ORS, SACE/CCL, and the SCSBA all agreed that the Company's proposed capacity rates (which assigned a zero capacity value to solar) were not reasonable. The Commission's Order approving the proposed rates did *not* find that the evidence showed that the proposed capacity rates were reasonable – only that the proposed capacity rates were "...reasonable at this time, *in the absence of a viable alternative proposal being presented by any other party*." Order No. 2018-322(A) at p. 15, (emphasis not in original). The Commission's reiterates several times the fact that its holding is predicated on the Intervenors' failure to provide alternative rates.

Order No. 2018-322(A) at p. 15 ("The Commission further reiterates that no other party presented an alternative estimate of SCE&G's avoided capacity costs."), Order No. 2018-322(A) at p. 16 ("In fuel proceedings before this Commission, mere assertions that fail to offer and justify an alternative just and reasonable rate are of limited value in the final determination of a final just, reasonable, and appropriate rate."); *also see,* April 25, 2018 Directive Order (the Commission purported to rely on the following, that they, "…were not presented with a viable avoided capacity cost factor by any party except SCE&G. The other parties took great pains to explain how they believe SCE&G inappropriately derived its factor, but the parties failed to present an alternative for us to consider.")

There are several errors in this holding. In the first instance, and as discussed further below, it is the Company's burden to show that its proposed rates are reasonable. It is *not* the Intervenors' burden to show that Company's proposed rates are unreasonable, much less their burden to formulate "viable alternative proposals" for rates.

As a practical matter it would be nearly impossible to come up with completely sound proposals. As Dr. Lynch testified, the utility calculates rates based on a combination of spreadsheets and computer modeling. Even after the limited discovery that was available given the short time frame in this docket, the Intervenors do not have access to all the inputs used by the Company to calculate their rates, and moreover do not have access to the PROSYMM computer model used by the Company to calculate energy rates (a license for PROSYMM costs tens of thousands of dollars to purchase).

And Intervenors did propose, to the best of their ability given the limited information available, some alternative rate calculations, such as Dr. Horii's suggestion that the PR-2 capacity value be set at 19.5% of the avoided cost of 16 per kW from a 100 MW change to SCE&G's base resource plan that excludes any non-committed future resources and reflects any planned plant retirements of firm capacity. Horii Direct Testimony, at 21:13-23. The Commission overlooked these proposals.

The Commission's Order also faults the Intervenors for not filing a Motion to Compel SCE&G to produce alternative rates. Order No. 2018-322(A) at p. 16, "During the hearing, the Commission heard several complaints that SCE&G was not forthcoming with discovery production. However, the Commission did not receive any Motion to Compel nor any other indication of disputes in the discovery process, prior to the hearing." However the Company maintained in discovery that it had never calculated such alternative rates (although Dr. Lynch admitted at the hearing that the Company had in fact made preliminary revised rate calculations in the fall of 2017, Hearing Tr. at E-51:3-23).

In Order No. 2018-28 (in Docket No. 2014-246-E), the Commission clarified that Motions to Compel are properly limited to circumstances where a party is alleged to have failed or refused to comply with discovery. Thus, a Motion to Compel would not have been appropriate here. Consistent with that Order, instead of filing a motion to compel, Intervenors CCL/SACE filed a "Petition" asking the Commission, prior to the hearing, to require the Company to produce a rate calculation based on alternative inputs. Petition For An Order Requiring South Carolina Electric And Gas Company To Comply With Commission Order No. 2018-55 (March 21, 2018). The Commission's denial of that request barred the Intervenors' only mechanism for obtaining complete alternative rate calculations.

2. The Commission Improperly Shifted the Burden of Proof Regarding the Reasonableness of SCE&G's Rates from the Company to the Intervenors.

The Commission's Order approving the Company's proposed rates simply because no other party had come up with a better set of alternative rates effectively shifts the burden of proof with regard to reasonableness from the Company to the Intervenors. This was contrary to law. A utility seeking Commission of a proposed rate change bears the burden of showing that its proposed rates are reasonable. Although a utility's proposed rates are entitled to a presumption of reasonableness, when another party produces evidence to rebut that presumption, the burden of persuasion shifts back to the Company. *Utils. Servs. of S.C., Inc. v. S.C. Off. Regulatory Staff*, 392 S.C. 96, 109 (2011) (quoting *Hamm v. S.C. Public Service Comm'n*, 309 S.C. 282, 289, 422 S.E.2d 110, 114 (1992)).

The Intervenors in this proceeding introduced substantial evidence to rebut any presumption of reasonableness in the Company's proposed rates. The Commission does not deny that. Consequently the Commission should have shifted the burden of persuasion to the Company to prove the reasonableness of its rates. Instead, it simply approved the proposed rates because it found (contrary to the evidence) that no other party had demonstrated that an alternative proposed rate was more reasonable.

The Commission's inappropriate shifting of the burden of proof is further confirmed by this passage in the April 25, 2018 Directive Order: "Moreover, it is not sufficient for a litigating party to meet its burden of proof by asking a utility, after the hearing, to develop a new factor pursuant to that party's specifications for inclusion in rates – an approach several parties would have us do as suggested by proposed orders." (Emphasis in original). As discussed above, the Intervenors asked the Company prior to the hearing to develop new rates, and asked the Commission for its assistance in this regard as well. They were rebuffed by both the Company and the Commission.

This inappropriate burden-shifting is explicit in the motion made by Commissioner Bockman at the Commission's open meeting, as set forth in its April 25, 2018 Directive Order. The April 25, 2018 Directive Order states, "…it is not legally sound under 58-27-865(A)(2)(c) to assert that, because a party disagrees with the newly proposed factor, then a legacy factor approved in a prior proceeding should be maintained."

The Commission's burden-shifting effectively penalized the non-utility parties for gaps in record that were caused by, or exacerbated by SCE&G. Penalizing the other parties for gaps in the record is particularly unreasonable in this case, considering that:

- SCE&G had more than six months to prepare its proposed tariff filing, while the other parties were given less than 45 days to review that proposal and prepare their responsive evidence.
- SCE&G made dramatic changes to its methodology and approach to developing QF rates, yet it did not provide a comprehensive, detailed explanation of its proposals in its direct testimony.
- SCE&G could have, but did not provide a complete set of workpapers and supporting documentation in its initial filing – forcing ORS and the other parties to lose valuable time trying to understand its proposals and determine what additional information was needed.
- These problems were further exacerbated by SCE&G's unwillingness to be cooperative during discovery, failing to provide some of the requested information, and taking longer than necessary to respond to other requests.

3. <u>The Commission's Refusal to Maintain the Current PR-2 Rates in Effect was Erroneous.</u>

Intervenors did, in fact, suggest another alternative rate that has been approved by the Commission – the current PR-2 rates. The Commission rejected this suggestion, finding that "There is no evidence to demonstrate that maintaining such rates would be appropriate or that it would not result in SCE&G's customers having to pay for excessive avoided capacity costs." Order No. 2018-322 at p. 16. In so holding, the Commission fails to acknowledge that the existing tariff enjoys a presumption of reasonableness. *Cf. Edge v. State Farm Mutual Insurance Company*, 366 S.C. 511, 623 S.E.2d 387 (2005).

4. The Commission Ignored the Option of Requiring a "Compliance Filing."

The Commission's Order also ignored the option of requiring a "compliance filing" by the Company at the conclusion of a hearing, to resolve any gaps in the record. It is common practice in utility rate proceedings for the parties to cross examine the utility's witnesses and put forward evidence disputing specific aspects of the utility's proposals. At the conclusion of the hearing, the regulatory commission issues an order ruling on the disputed issues, and it requires the utility to submit a "compliance filing" which reflects the impact of its rulings. This "compliance filing" is then subjected to further review to confirm the utility has correctly interpreted and implemented the commission's ruling on the disputed issues.

This common practice flows in part from the fact that the utility has the burden of proof, and in part from the fact that it is not practical for other parties to quantify the impact of each issue (or sub-issue) since they do not have access to much of the required information. Moreover, the parties cannot readily determine how issues they are concerned about will interact with issues raised by other parties, nor can they predict in advance how the Commission will rule on all of the disputed issues and sub-issues. Nor is it possible to know prior to the hearing all of the evidence or all of the issues that arise during the hearing – unlike most civil litigation, which is typically focused to a smaller set of issues, and the parties have months to prepare for the trial, including depositions of the expert witnesses. In contrast, in utility rate proceedings it is not feasible for the parties to anticipate and quantify the impact of all of the potential combinations and permutations of ways the Commission might rule on the disputed issues and sub-issues.

It is common practice in utility rate proceedings for the Commission to rule on the disputed issues after the hearing, and to require the utility to submit a new set of tariffs that comply with its decision. This procedure eliminates the need to calculate rates based on hypothetical possibilities concerning how the Commission might rule on potential combinations of issues and sub-issues, and it ensures that the final tariff accurately accounts for all of the decisions made by the Commission.

The use of a "compliance" filing also reduces the incentive for "gamesmanship" by the utility, which otherwise have a strong incentive to withhold information in order to prevent ORS and other parties from quantifying the effect of their position concerning the disputed issues.

By ignoring the option of a "compliance filing", the Commission has effectively penalized ORS and other parties for gaps in the evidentiary record. This is particularly unreasonable in this case, because the party with the burden of proof – the utility – is largely responsible for the gaps in the record (because it refused to provide information within its exclusive control) and because the other parties did not have adequate time to obtain the needed information or prepare the quantification sought by the Commission prior to the hearing.

5. Commission did not Afford Due Process to the Non-Utility Parties.

   The Commission's Order recognized the severe time restraints on the non-utility parties.

6. Key Issues Where SCE&G Failed to Meet its Burden of Proof:

   1. Eliminating the standard offer rate for non-solar QFs.

   2. Relying on a single solar profile that is not representative of other solar QFs.

   3. Relying on a 21% winter reserve margin.

   4. Assigning zero capacity value to solar QFs.

   5. Relying on the Company's sub-optimal resource plan.

CONCLUSION

Based on the foregoing, and in the interest in providing due process to the Petitioner, this Commission should rehear and/or reconsider this matter and (**i**) require the existing QF tariff to remain in effect (**ii**) require a "compliance filing" which would be subject to further review and approval (**iii**) require SCE&G to submit a new QF tariff filing which overcomes the flaws identified in this proceeding (**iv**) temporarily hold the proposed QF tariff in abeyance and provided an opportunity for the Intervenors and ORS to conduct additional discovery, provide additional testimony and another hearing.

AND GRANT SUCH OTHER AND FURTHER RELIEF AS IT DEEMS APPROPRIATE.

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Respectfully Submitted,

/s/

Richard L. Whitt,
Timothy F. Rogers,
AUSTIN & ROGERS, P.A.
508 Hampton Street, Suite 300
Columbia South Carolina, 29201
(803) 256-4000
Counsel for the South Carolina Solar Business Alliance.

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